

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 SAN ANTONIO DIVISION

4 HOLCOMBE, et al.,)

5 Plaintiffs,)

6 vs.) Civil Action No.

7 UNITED STATES OF AMERICA,) 5:18-CV-00555-XR

8 Defendant.) (Consolidated cases)

9
10
11 REMOTE ORAL VIDEOTAPED DEPOSITION

12 UNITED STATES OF AMERICA

13 BY ITS CORPORATE REPRESENTATIVE

14 JAMES KEVIN POORMAN

15 Thursday, July 9, 2020

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23
24 Reported by:

25 Rebecca Callow, RMR, CRR, RPR

1 A. I am now, yes.

2 Q. And how long have you been a civilian
3 employee of the Air Force?

4 A. 20 years.

5 Q. Is the testimony that you're giving today
6 within the course and scope of your employment with
7 the Air Force?

8 A. Yes.

9 Q. Do you understand that you have been
10 designated as a representative of the Air Force in
11 this lawsuit?

12 A. Yes.

13 Q. Do you have full authority to speak on
14 behalf of the Air Force today?

15 A. Yes.

16 MR. STERN: Objection.

17 Mr. Poorman -- to the extent that
18 you're asking about certain particular topics for
19 which he's been designated as a representative of
20 Air Force OSI.

21 BY MR. JACOB:

22 Q. And, you know, that's a good point to raise
23 as well.

24 At times, Mr. Stern may object. And
25 unless Mr. Stern tells you expressly not to answer my

1 question, do you understand that you are obligated to
2 answer my question?

3 A. Yes.

4 Q. Do you understand that you have an
5 obligation to testify on what is known or reasonably
6 known by the government on the topics you've been
7 designated for today?

8 A. Yes.

9 Q. Are you fully prepared to discuss those
10 topics?

11 A. I believe I am, yes.

12 Q. And in a second we'll go through the
13 notices to make sure we're on the same page about
14 the specific topics.

15 But before we get there, can you tell
16 me briefly how, if at all, you prepared for this
17 deposition?

18 A. I read a variety of documents that were
19 listed in the deposition notices and I spoke with
20 DoJ and Air Force attorneys, and then I also spoke
21 with personnel in the Air Force Office of Special
22 Investigations that could help inform me to a
23 greater degree on the topics that I anticipated
24 being questioned about.

25 Q. Did you prepare in any other ways?

1 So I talked with Lauren Ware about --
2 Lauren Ware followed John Pecko into the forensic
3 teaching position at the OSI academy in about the
4 2008 or '9 time frame. So she followed John Pecko.

5 There was a break between the two. I
6 don't recall that discussion, so I don't know how
7 much of a break. So she took over the training of
8 those blocks of instruction -- or part of those
9 blocks of instruction and was there until like 2012.

10 So, much like John Pecko, I was trying
11 to get an understanding of whether -- to what extent
12 the training had continued on her watch as it did on
13 John Pecko's watch, and kind of compare it to the
14 extent that it was consistent with what I had been
15 training in 2001-2002 to see if there was continuity
16 of training from those who actually were in the
17 classroom doing the training.

18 Q. And what did you learn from Ms. Ware?

19 A. That it did continue, that she was teaching
20 essentially the same material that I had been
21 teaching. In fact, many of her slides she offered
22 were -- she knew to be slides I had put together,
23 many of the photographs and many of the slides,
24 so ...

25 Q. Did you discuss with Ms. Ware anything else

1 some reason I was curious the extent to which we --
2 did we ever submit Mr. Kelley's fingerprints? Are
3 they still in the file or do they exist on those,
4 because I was curious of the extent to which -- so
5 that was a question I asked.

6 And then I asked a little about I2MS,
7 trying to understand a little about the upload and
8 then how information moved from our headquarters, or
9 from OSI to the DoJ to the FBI to the III systems
10 there. That's -- that's the primary topics I was
11 talking to him about.

12 Q. I think the first thing that you asked
13 Mr. Brown was whether the Air Force did submit
14 Kelley's fingerprints to the FBI. Is that fair?

15 A. Yes.

16 Q. And what did you discover?

17 A. That, no, the fingerprint cards were still
18 in the case file.

19 Q. What about concerning his final
20 disposition?

21 A. I don't know that I asked about final
22 disposition.

23 I think I assumed -- I don't remember
24 asking the question. I assumed that, since the
25 prints were in the file, that -- well, I think I

1 did. I think I did ask.

2 He said that there were two blank --
3 or there were blank R-84s, the green cards, were in
4 the file.

5 Q. Okay. So from that -- and this might be a
6 very basic question.

7 You said that the reason you know that
8 the fingerprints weren't submitted is when you
9 looked -- when he looked in the file he saw that
10 there were two fingerprint cards in the file. Is
11 that fair?

12 MR. STERN: Objection. This is beyond
13 the scope of what Mr. Poorman has been asked to
14 testify on as a representative of OSI.

15 A. That's what I recall. That's what I
16 recall.

17 BY MR. JACOB:

18 Q. And that's because, under the regulations,
19 one of the fingerprint cards are supposed to be
20 submitted to the FBI. Right?

21 A. Yes.

22 Q. So if you see in the file that there are
23 two fingerprint cards, you know that one of them
24 were not submitted. Right?

25 MR. STERN: Objection.

1 archive, that goes -- the file goes to headquarters?

2 A. Well, once the file is closed, all the
3 documents are in it and it's ready to go to archive,
4 yes. It comes through headquarters and then
5 headquarters archives.

6 So some come to our file room, some
7 end up archived at a storage location over in
8 Maryland Federal Records Repository location.

9 Q. With regard to the Devin Kelley
10 investigative file, when it was closed in the
11 2012-2013 time frame, did the closed file submission
12 to archive go through Air Force headquarters as
13 well?

14 MR. STERN: Objection. Beyond the
15 scope of Mr. Poorman's testimony.

16 A. That would have been the process, yes.

17 BY MR. JACOB:

18 Q. At any time, did the closed case archived
19 file not go through headquarters?

20 A. No.

21 It would have gone to our file room
22 personnel in order to get archived. They all come
23 to the file room, not agents. They're
24 administrators, but they come into that shop.

25 Q. So in terms of this three-tier process, one

1 going to just put my phone on mute but leave
2 everything else alone.

3 Is that the protocol here?

4 Q. Yeah. That works for me.

5 MR. STERN: Mr. Poorman, why don't you
6 go ahead and hang up from the conference call and
7 then you call back in in five minutes after.

8 THE WITNESS: Do you mean actually
9 hang up? Don't mute? Okay.

10 Okay. I'll do that then. Okay. All
11 right.

12 THE VIDEOGRAPHER: Mr. Stern, are you
13 okay with going off record?

14 (No audible response.)

15 THE VIDEOGRAPHER: Okay. The time is
16 11:12 a.m. Central. Going off record.

17 (Recess taken.)

18 THE VIDEOGRAPHER: The time is
19 11:25 a.m. Central. We're back on the record.

20 BY MR. JACOB:

21 Q. All right. Mr. Poorman, we're back on the
22 record. And we had initially talked about some of
23 the individuals that you had conversations with.
24 Now I'd like to show you a document that you may
25 have seen already.

1 Okay. Are you seeing a notice of
2 deposition on your screen, Mr. Poorman?

3 A. Yes.

4 Q. And have you seen this notice of
5 deposition?

6 A. Yes.

7 MR. JACOB: For the court reporter,
8 I'm going to attach this deposition as Exhibit 1 to
9 the deposition, and I'll email it to the court
10 reporter after the deposition is completed.

11 (Deposition Exhibit 1 was
12 marked for identification.)

13 BY MR. JACOB:

14 Q. I'd like to show you Exhibit A to this
15 deposition. Are you seeing page 8 of 12, Exhibit A,
16 to the notice of deposition?

17 A. Yes.

18 Q. And do you see topic number 5 on Exhibit 1?

19 A. Yes.

20 Q. Okay. Now, are you prepared to discuss
21 topic number 5 as it concerns the Air Force OSI?

22 A. As it concerns OSI, yes. Yes.

23 Q. And do you have authority to speak on
24 behalf of the Air Force on the training or education
25 Air Force OSI gave concerning the collection and

1 submission of fingerprints and final dispositions to
2 the FBI in DIBRS?

3 A. Yes.

4 Q. I also want to show you exhibit -- another
5 exhibit. We're going to mark this exhibit. You
6 should see a Plaintiffs' Notice of Deposition, page
7 1 of 10, on your screen now. Correct?

8 A. Yes.

9 MR. JACOB: And this is our second
10 notice of deposition, which we will mark as
11 Exhibit 2. And I'll email the court reporter
12 afterwards.

13 (Deposition Exhibit 2 was
14 marked for identification.)

15 BY MR. JACOB:

16 Q. Have you seen this notice before,
17 Exhibit 2?

18 A. Yes.

19 Q. And I'm going to show you Exhibit A of
20 Exhibit 2. You should see page 4 of 10 on your
21 screen.

22 A. Yes.

23 Q. And are you prepared to discuss topic 1 of
24 Exhibit 2 as it relates to Air Force OSI?

25 A. Yes.

1 individuals who those instructions apply
2 to on the substance of those
3 instructions?"

4 And he answers "Yes."

5 A. That's -- that correctly.

6 Q. Okay. Do you agree with that proposition,
7 that when the Air Force issues mandatory
8 instructions, they have an obligation to train those
9 individuals on those instructions?

10 A. For mandatory instructions, yes.

11 Q. Okay. And in this case there are several
12 mandatory instructions that you reviewed. Right?

13 A. Yes.

14 Q. And we discussed a few of them, including
15 the mandatory instructions dating all the way back
16 to 1995 concerning the submission of fingerprints
17 and final dispositions to the FBI. Right?

18 A. Well, we discussed them going back to 1987.
19 Yes.

20 Q. Right. Okay. So it's fair to say when the
21 Air Force issues mandatory instructions on the
22 collection and submission of fingerprints and final
23 dispositions to the FBI, the Air Force has an
24 obligation to train special agents on that process?

25 MR. STERN: Objection.

1 AFOSI Manual 90-101 as being mandatory. Right?

2 A. Yes.

3 Q. Okay. So let me show you page 7 of
4 AFOSI 90-101, Bates-stamped USA 22541.

5 Do you see that?

6 A. Yes.

7 Q. I'm going to zoom in to Paragraph 2.2.2.

8 Do you see that?

9 A. Yes.

10 Q. It gives -- region case reviewers, RCRs,
11 the -- may design their own processes for
12 identifying, reviewing, and tracking high-visibility
13 investigations. Right?

14 A. Yes.

15 Q. And then it says, "Region reviewers will
16 use the region case review checklist for their case
17 reviews, but may expand on it as needed based on
18 unique local requirements or procedures." Right?

19 A. Yes.

20 Q. Per 90-101, the region case reviewers are
21 required to use the region case review checklist but
22 may expand on that. Fair?

23 A. Fair.

24 Q. So, going back to our spreadsheet, fair to
25 say, under 90-101, the region case review checklist

1 is a mandatory checklist?

2 A. Yes. I would agree that that's the read of
3 the paragraph, yes.

4 Q. Okay. So looking at the various tasks on
5 USA 25432, a region case reviewer would go through
6 and determine whether each of these checklist items
7 had been met. Right?

8 A. Yes.

9 Q. So, for example, you have administrative,
10 investigative sufficiency, records checks,
11 et cetera?

12 A. Yes.

13 Q. I'm showing you Case Quality. Please tell
14 me what the Case Quality tab is for.

15 A. Give me just a moment to read through.

16 Q. I'll try to make this as big as possible.

17 (Document review.)

18 BY MR. JACOB:

19 Q. Mr. Poorman, let me reask that question so
20 our record is clear.

21 Can you tell me what Tab H, the Case
22 Quality tab in the region case review checklist, USA
23 25432, is intended for?

24 A. To prompt a reviewer to look at, as
25 categories investigative sufficiency, whether it's

1 written professionally, whether the case appears to
2 be being run with some degree of timeliness
3 consideration; are they making progress, is it
4 compliant with policy, data integrity, information
5 entered into I2MS, for example, is it accurate.
6 That's what it means.

7 Q. So here in Tab H, we're looking -- the
8 region case reviewers are to ensure that the cases
9 that they review are in compliance with current
10 Air Force policy, for example?

11 MR. STERN: Objection.

12 A. Yes.

13 BY MR. JACOB:

14 Q. So that includes the collection and
15 submission of fingerprints and final disposition
16 reports. Right?

17 MR. STERN: Objection. The document
18 speaks for itself.

19 A. Well, to the extent that what you're asked
20 to surveil here, if you will, asked to review is
21 available to you, then you would want to look at it.

22 But this is 2007, and as I mentioned
23 before, the file that you're looking at is a digital
24 file because the file is sitting at a field unit.

25 And in '7 at least, and then up

1 were collected and submitted.

2 MR. STERN: I'm sorry, Tom. I don't
3 know if you broke up at the end of that sentence.

4 MR. JACOB: Let me reask the question.

5 MR. STERN: Thank you.

6 BY MR. JACOB:

7 Q. The checklist says -- Mr. Poorman, can you
8 hear me?

9 A. Yes, I can.

10 Q. So when the checklist says "compliance with
11 current policy," that includes ensuring compliance
12 with the part of the policy that requires the
13 collection and submission of fingerprints to the
14 FBI. True?

15 MR. STERN: Objection.

16 A. It includes checking compliance with
17 compliance items that you can see. Yes.

18 BY MR. JACOB:

19 Q. Well, I'll get to the "see" part, but I
20 want to take this baby steps.

21 A. Okay. I'm sorry. Yes.

22 Q. So fair to say that when the case review
23 checklist says compliance with current policy, that
24 includes compliance with Air Force policy to submit
25 final dispositions to the FBI?

1 A. Yes.

2 Q. Okay. Now, you said that -- I think the
3 next part of your -- our discussion was that, you
4 know, Air Force region reviewers may not be able to
5 see whether fingerprints were submitted or not.
6 Right?

7 A. At that time, yes. That's correct.

8 Q. Well, an Air Force reviewer or Air Force
9 region reviewer certainly would be able to see
10 electronically whether a suspect of a crime had been
11 interviewed. Right?

12 A. Yes.

13 Q. And they would be able to see whether they
14 had -- let me back up a little bit.

15 Air Force policy required their special
16 agents to coordinate with the staff judge advocate on
17 issues of probable cause before submission of
18 fingerprints. Right?

19 MR. STERN: Objection.

20 A. It depends on the time frame.

21 That probable cause standard didn't
22 come into play until IC4 121. So in the 2007
23 instruction, at the time you pull this, at that
24 point PC was not part of the determination.

25 \\

1 BY MR. JACOB:

2 Q. Well, let's look at just the -- during the
3 Devin Kelley investigation.

4 During the Devin Kelley investigation,
5 Air Force special agents were required to consult
6 with the SJA on probable cause determinations.
7 Right?

8 A. Yes.

9 Q. And not only were they required to consult
10 with the SJA, they were supposed to document their
11 consultation in the electronic file?

12 A. Yes.

13 Q. So a region case reviewer reviewing a case
14 file with Detachment 225 would see if the agents are
15 doing their job, following policy, that a
16 consultation on probable cause following a subject
17 interview was done?

18 A. Documented it, yes.

19 Q. Right. And they're supposed to document it
20 under that mandatory policy. Right?

21 A. Yes.

22 MR. STERN: Objection.

23 BY MR. JACOB:

24 Q. So based on that information alone, they
25 could see that fingerprints need to have been

1 collected and submitted to the FBI?

2 A. They could conclude that, yes.

3 Q. And if they're following this checklist,
4 they could simply call up the case agent and ask
5 them, hey, just want to make sure that you submitted
6 the fingerprints per policy?

7 A. They could if it expanded to that. This
8 checklist doesn't call out specifically that issue.
9 But -- and there are hundreds of compliance issues
10 for us to follow.

11 A region may or may not have drilled
12 into the hundreds of compliance issues that we have
13 in an investigation and drilled into it.

14 You have to accommodate some
15 discretion on the part of a region reviewer as to
16 what they drill into or a case review could take
17 weeks.

18 Q. Well, Mr. Poorman, I thought we agreed that
19 this case review checklist was not discretionary.

20 A. Okay. Well, even if it's mandatory -- and
21 we agree it's mandatory -- when you get to
22 compliance with current policy, then that opens the
23 door to hundreds of compliance issues regarding an
24 investigation.

25 What I was saying is this doesn't

1 yes.

2 Q. Well, let me ask you this:

3 Are you familiar with the FBI's NICS
4 background search system?

5 A. Yes. In general, yes.

6 Q. Well, are you aware that the FBI uses that
7 background search system when individuals try to
8 purchase firearms from federally licensed firearm
9 dealers?

10 A. Yes.

11 Q. Would you agree with me that the FBI -- for
12 the FBI's NICS system to work, federal agencies must
13 accurately collect and submit criminal history of
14 violent felons?

15 MR. STERN: Objection.

16 A. Yes.

17 BY MR. JACOB:

18 Q. Would you agree with me that the more
19 information that the FBI has on dangerous felons,
20 the better decisions they can make in preventing
21 individuals who shouldn't have firearms from getting
22 them?

23 A. The more information that's in the systems
24 they look at, yes.

25 Q. Right. The more information the FBI has on

1 motivation for doing this or the opportunity to do
2 this with a church full of people.

3 So when I get to that, I just say,
4 yeah, that portion of the stool leg that had to do
5 with the ability to buy the weapon, if that's the
6 chosen weapon method -- and in this instance it was,
7 as opposed to many other weapons; semi-trucks and
8 other things that could be used to kill a
9 concentration of people.

10 We did not do what we needed to do to
11 prevent the ability to buy a firearm through a
12 firearms dealer. That was our omission. And that's
13 why I keep using that word as -- as the context.

14 I don't mean to quibble, but that is
15 very much the way that I think we look at this.

16 Q. Would you agree with me that reducing the
17 capability of dangerous felons from getting firearms
18 is one way to reduce the risk of harm to the public?

19 A. Yes.

20 MR. STERN: Objection. Asked and
21 answered. This is the same line of questioning in
22 multiple different ways. His answer remains the
23 same as it was before.

24 BY MR. JACOB:

25 Q. Sir, let me ask you this:

1 You mentioned, in your terms the stool
2 of opportunities, that there are other ways to
3 acquire a firearm. Do you remember that
4 conversation?

5 A. Yes.

6 Q. Do you have any evidence that Devin Kelley
7 acquired firearms from any individuals other than a
8 licensed firearms dealer?

9 MR. STERN: Objection. This is
10 outside the scope of Mr. Poorman's testimony. He
11 wouldn't possibly have -- you can answer it in your
12 own personal capacity, if you have any knowledge --
13 personal knowledge of that question.

14 You may answer that question.

15 A. No, I don't -- I don't.

16 I don't specifically recall exactly.
17 I know there were some weapons purchased. I don't
18 know where -- I don't recall exactly where all the
19 weapons per purchased. I'm sorry.

20 BY MR. JACOB:

21 Q. In all fairness, sir, you're the one that
22 brought up the other avenues of purchasing a
23 firearm.

24 So what I want to know is, do you have
25 any evidence to suggest that Devin Kelley attempted

1 to purchase firearms from anyone other than a
2 federally licensed firearms dealer?

3 A. Okay. No, I don't.

4 Q. Okay. Let me show you another document.

5 MR. STERN: Tom, are we changing
6 subjects?

7 MR. JACOB: Yes.

8 MR. STERN: Can we take five minutes?

9 MR. JACOB: Yes.

10 Does that work for you, sir?

11 THE WITNESS: If that's me, yes.

12 MR. JACOB: Yes. Absolutely.

13 MR. STERN: Mr. Poorman, I assume
14 we're going to be going a few more hours, so I don't
15 know what you want to do about lunch or if you need
16 a longer break. I can go however you guys see fit.
17 I just need five, ten minutes.

18 MR. JACOB: Let's go ahead and go off
19 the record and then we can ...

20 MR. STERN: Yeah.

21 THE VIDEOGRAPHER: The time is 12 --
22 I'm sorry. The time is 12:44 p.m. Central. We're
23 going off the record.

24 (Recess taken.)

25 THE VIDEOGRAPHER: The time is

1 Q. Well, let me ask you this:

2 Is this document, the IG unit
3 compliance inspection, available to Air Force OSI?

4 A. Well, this is conducted by.

5 I don't know that I understood your
6 question correctly.

7 Q. Sure. Let me show you the first page of
8 USA 25055. Do you see that?

9 A. Yes.

10 Q. And do you see under "Distribution"?

11 A. Yes.

12 Q. Can you tell me who this document is
13 distributed to?

14 A. To the Region 2 commander and to the AFOSI
15 commander.

16 Q. Okay. So the Region 2 commander and the
17 AFOSI commander gets a copy of this document after
18 it's completed. Fair?

19 A. Yes.

20 Q. So let's see what they would have seen.

21 So taking a look at the Section T,
22 that's the section that is titled "AFOSI Detachment
23 225 Holloman AFB." Right?

24 A. Yes.

25 Q. And it seems like Holloman Air Force Base

1 Q. Well, we know the document was -- and I can
2 show you the first page again if you want.

3 A. I remember 2010. Right.

4 It would have been before that,
5 because that's -- but I don't -- I don't -- I don't
6 see in this document it tells me what period.

7 Q. Okay. Well --

8 A. But it would apply to whatever they were,
9 yes.

10 THE REPORTER: They would apply to
11 what, sir?

12 THE WITNESS: That comment would apply
13 to whatever the body of cases were that they looked
14 at, whatever period.

15 BY MR. JACOB:

16 Q. Well, what we know is that the Region 2 --
17 Region 2 FIR commander knows in 2010 that the
18 monthly case reviews were not conducted and
19 documented appropriately. True?

20 A. Yes.

21 Q. Would you agree with me if I were to say
22 periodic case reviews for sufficiency of
23 investigative effort and compliance with established
24 policy is a fundamental aspect of the investigative
25 process?

1 serious enough to rise to the level of a finding.

2 And then there would be a requirement
3 to comment and come back on it, but this didn't rise
4 to a finding, so far as I can see in this paragraph.

5 So I don't know that -- if there was
6 anyone that specifically had to take action and
7 report back on what action they took based on this.

8 Q. Well, you know, we might be quibbling with
9 the words "finding," you know.

10 At the end of the day, I guess, what
11 I'm concerned about is there -- AFOSI Region 2
12 commander and AFOSI commander is being told that one
13 of their detachments is not doing a fundamental
14 aspect of the investigative process, monthly case
15 reviews. Right?

16 MR. STERN: Objection.

17 A. Yes.

18 BY MR. JACOB:

19 Q. Okay. And I'll shortcut this because I
20 think your answer to this is you do not know what
21 was done in response to this monthly case reviews
22 not being conducted or documented appropriately. Is
23 that fair?

24 A. Yes.

25 Q. Okay. Let me show you -- on your screen

1 A. Yes. That's right up front. Yes.

2 Q. Let me ask you this:

3 When a manual like this is released, or
4 changes to a manual like this are released by
5 Air Force Office of Special Investigations, how do
6 they let the agents on the ground know about a change
7 or a new manual --

8 A. They send out a worldwide email --

9 Q. Did they do anything else --

10 A. -- it goes to everybody. I'm sorry.

11 Q. Do they do anything else other than
12 emailing all agents?

13 A. Not routinely, no.

14 Q. Okay. Let's look at some of the specifics
15 in this manual. I'm going to show you page 75.

16 All right. You should see page 75,
17 AFOSI Manual 71-121. Right?

18 A. Yes.

19 Q. Okay. So under this manual, do you see
20 Paragraph 5.14.1.2?

21 A. Yes.

22 Q. And it's the paragraph titled "Unit
23 Leadership Review." Right?

24 A. Yes.

25 Q. It requires that unit leadership must

1 review all FD-249, both hard copy and electronic
2 when accomplished, and R-84 for accuracy and
3 completeness, before sending them to the FBI.

4 Right?

5 A. Yes.

6 Q. And this is a supervisory obligation of
7 unit leadership. Right?

8 A. Yes.

9 Q. And unit -- unit leadership are not
10 personally responsible for sending fingerprints and
11 the final dispositions to the FBI. Right?

12 A. They're not personally responsible.
13 Normally, it's a case investigator or another in the
14 unit, if I'm understanding that question, yes.

15 Q. Yes. Their obligation is supervisory, and
16 that they are supervising individuals in their
17 command to ensure that they do their jobs
18 appropriately. Right?

19 A. Yes.

20 Q. And part of that supervisory responsibility
21 is to review these fingerprint cards and the R-84s
22 before sending -- before the agent sends them on to
23 the FBI. Right?

24 A. Yes.

25 Q. What training does Air Force OSI provide

1 unit leadership in conducting these types of
2 reviews?

3 A. No special training on that aspect.

4 Q. What training did AFOSI provide unit
5 leadership in conducting case file reviews?

6 A. There's no special course or training for
7 that.

8 Q. And this might be just a lawyer question,
9 but you say there's no special course. Is there
10 some sort of un-special course?

11 Is there -- you know, I'm trying to
12 capture any possible training that AFOSI might give
13 to unit leadership on this type of review, either the
14 case file review or the review of the fingerprints
15 and the final disposition.

16 A. Well, it takes me back to the definition of
17 "training." So there's no special course that they
18 go to and sit down in a classroom and they get
19 instructed on how to do that.

20 So when I mean special training, I
21 mean that kind of training. They get training. The
22 training is on-the-job training. They went through
23 the same training that the same people that are
24 supposed to supervise and do that.

25 The training consists -- plus

1 they, by virtue of the years of experience they
2 have, now have received training, practiced the
3 training, understand the requirement, and are in a
4 position to know, as a result of that training and
5 experience, what needs to be done.

6 Q. Okay. So is it fair to say that
7 detachment -- or unit leadership do not receive any
8 on-the-job training beyond what a normal special
9 agent would receive in the conducting of criminal
10 investigations?

11 A. No. They might.

12 They may get on criminal
13 investigations, not on fingerprint cards and R-84s.
14 They could get advanced training. So I don't mean
15 to -- but I'm trying to understand what the scope of
16 the question is.

17 Q. No, no. I appreciate that. It helps me
18 ask better questions. So let me ask a better
19 question.

20 Would it be fair to say unit leadership
21 do not receive any training beyond on fingerprints
22 collection and submission or final disposition
23 collection and submission beyond what a special agent
24 would receive?

25 A. Correct.

1 Q. Even though a unit leader is supposed to
2 also do case file reviews on a monthly basis. Fair?

3 A. Yes.

4 Q. And are supposed to specifically review the
5 fingerprints and R-84s, the final dispositions, for
6 accuracy and completeness. Right?

7 A. Yes.

8 Q. And let me talk to you about why that
9 review is important. Because if the fingerprint
10 card or the R-84 is not filled out accurately or
11 completely, the FBI might send it back. Right?

12 A. Yes.

13 Q. So it's important that you have a second
14 set of eyes reviewing those cards to make sure that
15 those cards are filled out accurately and
16 completely. Fair?

17 A. Yes.

18 Q. Okay. Let me share my screen again, and
19 keep going on the same manual.

20 Do you see page 75 of AFOSI
21 Manual 71-121 still?

22 A. I do.

23 Q. And we're still on Bates stamp page
24 USA 492. Right?

25 A. Correct.

1 Q. I'm going to blow up and you should see
2 Paragraph 5.14.2. Do you see that?

3 A. I do.

4 Q. And it's "Military Subject Fingerprint
5 Submission" is the title of this heading. Right?

6 A. Yes.

7 Q. And it's the paragraph that requires AFOSI,
8 Air Force OSI, to submit FD-249s through the
9 fingerprint criminal activity to the FBI upon
10 determination following coordination with the
11 servicing SJA of probable cause. Right?

12 A. Yes.

13 Q. Fair to say that federal agencies should
14 collect and submit fingerprints to the FBI in a
15 timely manner?

16 A. Yes.

17 Q. Do you see the last part of that first
18 sentence that says, "Probable cause exists to
19 believe that the subject has committed an offense
20 listed in Attachment 8"?

21 A. Yes.

22 Q. Are you familiar with Attachment 8?

23 A. Attachment 8, yes. That's the -- that's
24 the 249.

25 Q. And you're seeing page 163 of the

1 All of the crimes listed in
2 Attachment 8 are those crimes in which an individual
3 may not be actually punished but could be punished
4 for more than a year. Right?

5 A. Correct. Correct.

6 Q. So if the FBI gets criminal history data
7 from the Air Force Office of Special Investigations
8 knowing that only those felonies are the ones that
9 are being submitted under the Air Force and DoD
10 rules, the FBI knows that something -- the criminal
11 history they get from the Air Force is going to be a
12 felony. Right?

13 MR. STERN: Objection.

14 A. I don't know what the FBI knows. I don't
15 know what they know. I -- this -- I don't know what
16 they know.

17 BY MR. JACOB:

18 Q. Well, what I mean is, if the Air Force is
19 only submitting and DoD is only submitting felony
20 convictions under Attachment 8 -- right?

21 A. Yes.

22 Q. -- then the FBI knows that those that they
23 are receiving under -- in the CJIS system are felony
24 convictions. Right?

25 MR. STERN: Objection.

1 common nomenclature description of the violation,
2 yes.

3 BY MR. JACOB:

4 Q. Okay. Now let me show you page 76 of this
5 document. Page 76, you have in front of you, of
6 AFOSI Manual 71-121. Right?

7 A. I do.

8 Q. And this is the page that requires
9 submission of the hard copy R-84 to the FBI within
10 15 days of notification of final disposition.
11 Right?

12 Let me make that bigger for you.

13 A. Yeah. If you could make it a little
14 larger. I can't see that.

15 Yeah. There. Thank you.

16 Q. Okay.

17 A. Yes. Yeah.

18 Q. Fair to say the Air Force has an obligation
19 to collect and submit criminal histories to the FBI
20 in a timely fashion?

21 A. Yes.

22 Q. For regulation, that's 15 days after
23 notification of final disposition?

24 A. Yes.

25 Q. Let me ask you this. We've talked about

1 agent. Right?

2 A. The Air Force is responsible for complying
3 with the requirement. So, yes.

4 Q. Yeah. And I'm sorry if this question is
5 very simple.

6 But if an agent doesn't follow this
7 regulation requiring the collection and submission of
8 final disposition data, that doesn't let the
9 Air Force off the hook. Right?

10 A. No.

11 MR. STERN: Objection. This line of
12 questioning has nothing to do with training or the
13 adoption of IG recommendations and, therefore, is
14 outside the scope of Mr. Poorman's testimony.

15 BY MR. JACOB:

16 Q. The Air Force has an ongoing obligation to
17 correct any final dispositions or fingerprints that
18 were not submitted to the FBI. Correct?

19 A. Yes.

20 Q. Okay. Let me show you -- this is 71-121.

21 You said that you reviewed regulations
22 going back to 1987. Right?

23 A. Yes.

24 Q. I'm showing you Air Force OSI Regulation
25 124-102. Do you see that?

1 Q. On your screen you should also now be able
2 to see page 2 of AFOSI Regulation 124-102. Right?

3 A. Yes.

4 Q. And I want to show you -- I'll zoom in, so
5 you can read it better. Do you see the paragraph
6 titled "Procedures"?

7 A. Yes.

8 Q. And, again, we see here all the way back to
9 1987 AFOSI units are supposed to contribute to the
10 III file for the offenses listed in Attachment 1.
11 Right?

12 A. Yes.

13 Q. And then detachment commanders and special
14 agents in charge will be responsible for ensuring
15 case agents obtain fingerprints and other necessary
16 data to complete the fingerprint form and the R-84
17 form. Right?

18 A. Yes. There's a little breakup there.

19 Yes.

20 Q. So, since 1987, it's been mandatory policy
21 that AFOSI agents collect and submit fingerprints
22 and criminal history to the FBI. Right?

23 A. Yes.

24 Q. Since 1987, commanders of OSI SAICs have
25 had the supervisory responsibility of ensuring that

1 their agents actually do this requirement. Right?

2 A. Yes.

3 Q. And that includes disciplinary abilities.

4 Right?

5 A. If it's severe enough, yes.

6 Q. Okay. Well, let's continue to move down
7 the regulations and let me show you another.

8 You should see Air Force Instruction
9 36-2201 on your screen. Right?

10 A. Yes.

11 Q. And this is Bates-stamped USA 12959.
12 Right?

13 A. Yes.

14 Q. And can you tell me -- first of all,
15 Air Force Instruction 36-2201 is a mandatory
16 instruction. Right?

17 A. Yes.

18 Q. And it's titled "Air Force Training
19 Program." Right?

20 A. Yes.

21 Q. Have you reviewed Air Force Instruction
22 36-2201 in preparation for your deposition today?

23 A. I perused it, yes.

24 Q. Can you tell me what the purpose of
25 Air Force Instruction 36-2201 is?

1 A. To generally outline how Air Force training
2 is conducted.

3 Q. Okay. And let me show you Chapter 4, the
4 first paragraph.

5 You're seeing Chapter 4 of Air Force
6 Instruction 36-2201. Right?

7 A. Yes.

8 Q. And this is the chapter on formal training.
9 Right?

10 A. Yes.

11 Q. And the first sentence on formal training
12 is, "The purpose of the Air Force training is to
13 ensure each individual is prepared to meet Air Force
14 mission requirements." Right?

15 A. Yes.

16 Q. A true statement?

17 A. I'm sorry?

18 Q. Is that a true statement?

19 A. Yes.

20 Q. Fair to say that one of the Air Force
21 mission requirements is collecting, submitting
22 fingerprints and final disposition data?

23 A. Yes.

24 Q. Okay. Let me show you page 35 of this
25 document.

1 Do you see page 35, USA 12993?

2 A. Yes.

3 Q. And paragraph -- can you tell me what a
4 career field education and training plan is?

5 A. Yes.

6 Q. What is a career field education and
7 training plan?

8 A. Do you want me to answer separate from
9 what's on the screen that's been enlarged?

10 Q. Well, first, I want to know your
11 understanding of a career field education and
12 training plan as described in AFI 36-2201.

13 A. So it's a plan on how you train your people
14 that are assigned to a particular career field.

15 Q. And CFETP, is that the acronym? Do you say
16 it a special way?

17 A. CFETP (pronouncing).

18 After a while it rolls off your
19 tongue, but CFETP is I understand what that is.

20 Q. Okay. So a career field education and
21 training plan identifies the training requirements
22 for a particular career field. Right?

23 A. Yes.

24 Q. Serves as a roadmap for career progression
25 and outlines requirements that must be satisfied at

1 appropriate points through the career path. Right?

2 A. Yes.

3 Q. So it's another way of saying these are the
4 minimum training requirements for various career
5 fields. Right?

6 A. Correct.

7 Q. Does the career field of a special agent
8 have a CFETP?

9 A. Yes.

10 Q. Okay. And I think you reviewed some of
11 those CFETPs. Right?

12 A. Yes.

13 Q. Okay. Let me show you one of them.

14 You should be seeing on your screen
15 USA 25379. Right?

16 A. Yes.

17 Q. Can you tell me what USA 25379 is?

18 A. Yes. That's the CFETP specific to the OSI,
19 the special investigations career field.

20 Q. So a special agent -- this would outline
21 the minimum training requirements for special
22 agents. Fair?

23 A. Yes.

24 Q. And when would this document be applicable
25 or effective?

1 that change.

2 There's no need to change the CFETP
3 because it already said collect and send, and after
4 the change it would still say collect and send.

5 It's with the understanding that you
6 collect and send or you train on whatever the policy
7 is that gives you the particulars that you would put
8 in front of a student.

9 Q. Okay.

10 A. So does that help?

11 Q. Sort of. But it might be helpful to talk
12 in specifics. So let me show you the specific page.

13 A. Okay.

14 Q. You should be seeing on your screen
15 page USA 25415 out of the document USA 25379. The
16 CFETP. Right?

17 A. Yes.

18 Q. And so just so that the Court is oriented
19 to what we're looking at, this is a table within the
20 CFETP called the STS. Right?

21 A. Yes.

22 Q. That's the Specialty Training Standard.
23 Right?

24 A. Yes.

25 Q. And the Specialty Training Standard in

1 CFETP is the formal training requirements mandated
2 by the Air Force. Right?

3 A. Yes.

4 Q. Here, for example -- I'll make that bigger
5 so you can see it better.

6 We have the Air Force mandating that
7 students learn how to fingerprint and photograph
8 subjects. Right?

9 A. Yes.

10 Q. And that is what is known as a core task.
11 Right?

12 A. Yes.

13 Q. And then we also have a "submit criminal
14 history data to the NCIC and FBI." Right?

15 A. Yes.

16 Q. Again, a core task.

17 A. Well, it's not asterisked here, so the
18 asterisks identify core tasks.

19 Q. So let me ask you this:

20 Are you aware if submitting criminal
21 history data to the FBI and NCIC became a core task
22 down the line?

23 A. Well, I think it was a core task here. I
24 don't know why the asterisk isn't there. And it
25 seems that -- I'm sorry. I'm a little confused in

1 looking at that.

2 Is this the -- I know I'm -- you're
3 not here to answer my questions, but I'm confused
4 on -- does this appear elsewhere -- fingerprints and
5 submitting criminal elsewhere in this CFETP?

6 Q. Not that I could find --

7 A. Under what heading? If we go one page,
8 maybe that would help.

9 Q. All right. You should be able to see
10 page 12 and 13 of the CFETP. Right?

11 A. Yes.

12 Q. So 12 is the heading titled
13 "Interrogations." Right?

14 A. Yes.

15 Q. And then it lists A through G. Right?

16 A. A through G, yes. Okay. I didn't have the
17 heading.

18 Q. Now, you said that submitting criminal
19 history and data to the NCIC and FBI should be a
20 core task?

21 A. Yes.

22 Q. Okay. And do you see the last -- let me
23 make it bigger for you.

24 Do you see the last three columns?

25 A. I do.

1 history data to the NCIC/FBI is listed as a 2B
2 requirement. Right?

3 A. Yes.

4 Q. So a 2 requirement says that, before
5 students can graduate, they must be able to do most
6 parts of a task and need only help with the hardest
7 tasks, partially proficient. Right?

8 A. Yes.

9 Q. And a B requirement is a task knowledge
10 level. Right?

11 A. Right.

12 Q. And that means that before a student can
13 graduate a formal training, they must be able to
14 determine step-by-step procedures for doing a task.
15 Right?

16 MR. STERN: Objection.

17 A. That's 2B. That's the "B" part, yes.

18 BY MR. JACOB:

19 Q. Yeah. So let's apply it to our situation
20 here, and specifically submitting criminal history
21 data to the NCIC/FBI.

22 The "B" part tells us that before a
23 student may graduate formal training, he must be --
24 or she must be able to determine step-by-step
25 procedures for submitting criminal histories to the

1 NCIC/FBI. Right?

2 A. Yes.

3 Q. And if a student graduates the formal
4 training, the CITP or the BSIC that we discussed
5 previously, without being able to determine
6 step-by-step procedures, for example, to submit
7 criminal history to the FBI or NCIC, that's a
8 failure in training. True?

9 A. Yes.

10 Q. Let me show you a second CITP.

11 This one. All right. You should have
12 on your screen a document that is Bates-stamped
13 USA 24755. Right?

14 A. Yes.

15 Q. And that is the career field and education
16 and training plan for special investigations dated
17 2012. Fair?

18 A. Yes.

19 Q. So this USA 24755 is the one that
20 supersedes the last document that we were looking
21 at, which was the 2000 career field and education
22 training plan. Right?

23 A. Yes.

24 Q. So we're going to go through this as well.
25 And we talked a little bit about the formal

1 education that these students have. I want to talk
2 about the on-the-job education with this document.
3 Let me show you page --

4 First of all, have you reviewed the
5 2012 career field education and training plan for
6 special investigations?

7 A. Yes. I've perused the first part and then
8 looked more closely at the STS portion, yes.

9 Q. Okay. So the page that you're looking at
10 is page 25, USA 24779. Right?

11 A. Yes.

12 Q. Okay. And this page, particularly the
13 paragraph on -- the last paragraph, 5.1.3.1,
14 discusses a probationary period. Right?

15 A. Yes.

16 Q. So we talked about how students -- special
17 agents go through the CITP, C-I-T-P, then they go
18 through BSIC, and then they have on-the-job training
19 as a probationary agent. Right?

20 A. Yes.

21 Q. So when -- and according to this
22 regulation, special agents are probationary for a
23 minimum period of 15 months. Right?

24 A. Yes.

25 Q. Was that also true of the 2000 document,

1 the 2000 career field education plan?

2 A. I don't know if it was true over the --
3 you're talking about the 15 months? Is that what
4 you mean?

5 Q. Yes. Yes.

6 A. Yeah. During that period, at some point,
7 12 -- I believe it was 12 months and we extended it
8 to 15 months, but I don't know exactly what year
9 that happened.

10 Q. Okay. Well, let's talk about what happens
11 in the probationary period.

12 Agents are supposed to receive
13 additional on-the-job training. Right?

14 A. Yes.

15 Q. And they're supposed to have someone
16 supervising their work during that probationary
17 period. Right?

18 A. Yes.

19 Q. And the supervisor is responsible for
20 ensuring that the probationary agent timely and
21 accurately follows regulations?

22 A. That they -- they're to ensure that the
23 agent is -- demonstrates the ability to perform
24 whatever the specific tasks to whatever level of
25 training they're required to do.

1 competently. Right?

2 A. Yes.

3 Q. So by the time a -- the probationary
4 period -- an agent graduates his probationary
5 period, he should be able to competently submit
6 fingerprints and criminal history data to the FBI.
7 Right?

8 A. Yes.

9 Q. And would it be fair to say if he does not
10 know how to competently submit fingerprints and
11 criminal history data to the FBI after graduating
12 his probationary period, that is a failure in
13 training?

14 MR. STERN: Objection.

15 A. No. I don't think it -- it may be a
16 failure in retention of information in -- that he
17 received in training, and he forgot or didn't do it.

18 It's hard to assess that question as
19 to what's at the root of the failure. Is it the
20 training or not complying with the training that
21 they received, so ...

22 Q. Okay. So if I can rephrase my question.

23 Would it be fair to say that if a
24 student finishes his probationary period and he is
25 unable to competently submit fingerprints or criminal

1 history to the FBI, it's either a problem with the
2 student's retention abilities or a problem with the
3 training, one of those two?

4 A. Correct.

5 And at that time, if they can't do it
6 competently at the time that they're certified off,
7 then there is a -- they shouldn't be off the
8 training, yes.

9 Q. Well, and that's what I mean is, if they're
10 certified as able to competently submit fingerprints
11 and criminal history to the FBI, but they actually
12 can't, that's a failure in training. Fair?

13 A. Yes.

14 Q. Okay. What about the ability to
15 competently submit criminal history data to DIBRS?
16 Are you familiar with that?

17 A. Yes.

18 Q. By the time --

19 MR. STERN: Can we take five minutes
20 if we're switching subjects?

21 MR. JACOB: This is still the -- I'm
22 literally done with this after this last line, so if
23 I can just finish this one point and then we can
24 take a break.

25 MR. STERN: Okay. I do apologize. Of

1 A. Let me read it if we could. Just one
2 moment.

3 Q. Sure.

4 (Document review.)

5 A. I've read it now.

6 And so I don't know of any specific
7 training he received, so I don't disagree with his
8 answer.

9 BY MR. JACOB:

10 Q. By the time he becomes SAIC, Mr. Taylor
11 should have completed the CITP training. Right?

12 A. The C-I-T-P, yes.

13 Q. Yes.

14 A. Yes.

15 Q. He should have passed BSIC training.
16 Right?

17 A. Yes.

18 Q. And he should have gone through
19 probationary period of on-the-job training. Right?

20 A. Yes.

21 Q. So by the time he is SAIC, he should have
22 received training on -- such that he's competently
23 able to submit criminal fingerprints and final
24 dispositions to the FBI. Fair?

25 A. Yes.

1 Q. Okay. Let me show page 28 of his
2 deposition. And I'm going to show you lines 4
3 through 12 first.

4 Do you see lines 4 through 12 on
5 page 28 of Mr. Taylor's deposition?

6 A. Yes.

7 Q. He's asked:

8 QUESTION: "But is it -- it's safe
9 to say, as you sit here today, that the
10 United States Air Force, when you went to
11 work as a detachment commander in 225 in
12 December of 2011, all the way up until
13 the time you retired in February of 2014,
14 you never had any specific training by
15 the United States Air Force as to
16 specifically when you should submit
17 fingerprints on behalf of those
18 committed -- convicted of a felony."

19 ANSWER: "Not that I recall, sir."

20 Did I read that correctly?

21 A. Yes.

22 Q. Are you aware of any testimony to
23 contradict -- or are you aware of any evidence to
24 contradict his testimony?

25 A. No.

1 Q. If you look at lines 13 through 16, do you
2 see he actually learned that you're supposed to
3 submit fingerprints as soon as there's probable
4 cause from the IG report?

5 A. Where are we on page 28? I'm sorry.

6 Q. Okay. Let me show you lines 13 through 17.

7 A. Okay. I can read it from here. Okay.

8 Thank you.

9 (Document review.)

10 A. Yes.

11 BY MR. JACOB:

12 Q. Okay. So you see that Mr. Taylor, the
13 SAIC, the commander of Detachment 225 when the
14 Devin Kelley investigation was going on, is
15 testifying that he didn't learn that you're supposed
16 to submit fingerprints when probable cause is
17 determined until he learned that from the inspector
18 general?

19 A. That's what it says. Yes.

20 Q. So that's a failure in training. Isn't
21 that true?

22 MR. STERN: Objection.

23 A. No.

24 BY MR. JACOB:

25 Q. Well, wouldn't it be fair to say he's

1 supposed to know when he -- when he should be
2 submitting fingerprints to the FBI before he
3 finishes his on-the-job training?

4 A. Yes.

5 Q. Here he's saying he didn't learn that until
6 after he retired.

7 A. Okay. Yes.

8 Q. Okay. So if he didn't learn that he was
9 supposed to submit fingerprints as soon as probable
10 cause is determined until after he retired, that
11 means he didn't learn that on the job, did he?

12 MR. STERN: Objection.

13 A. No. That's just what he says.

14 BY MR. JACOB:

15 Q. Do you believe he's lying?

16 A. I'm not saying he's lying. He may have not
17 recalled the training that he gets. It's very
18 comprehensive, and the training for fingerprinting
19 is only a very small portion of the overall
20 17 weeks.

21 So I don't know what he recalls, but I
22 just don't agree with his -- with his statement.

23 Q. Well, you know, he doesn't testify that he
24 doesn't recall that training. Right?

25 A. He testifies to the words I see in front of

1 Q. Okay. Well, what I see -- okay. So --

2 MR. JACOB: I'm sorry. Is someone
3 trying to say something?

4 BY MR. JACOB:

5 Q. Well, what we do know is that he did not
6 know, for whatever reason, that he -- that he was
7 supposed to submit fingerprints as soon as there's
8 probable cause. Right?

9 A. That's what he says.

10 Q. So, again, we're left with two
11 possibilities here. Fair?

12 A. Well, let me hear the possibilities. Yeah.

13 Q. One of the --

14 A. I think I --

15 Q. Well, one of the -- one of the
16 possibilities is that he was never trained on this.
17 He was never provided this information by the
18 Air Force.

19 Or the other possibility is that he was
20 provided it and he didn't retain it or he didn't read
21 it. Right?

22 A. Those seem to be the two possibilities,
23 yes.

24 Q. Okay. Let me show you -- I want to show
25 you pages 39 to page 40 of Mr. Taylor's deposition.

1 certainty, and that would include the ability to
2 look in a case file and see there's prints still in
3 it, then it would not have been a proper
4 certification.

5 BY MR. JACOB:

6 Q. And unlike Region 2, Mr. Taylor was
7 actually at Detachment 225. Right?

8 A. Yes. Correct.

9 Q. He could have easily pulled the case file
10 and looked to see if there were fingerprints or
11 final dispositions completed and sent. Right?

12 A. Yes.

13 MR. STERN: Objection. Scope.

14 BY MR. JACOB:

15 Q. Okay. You mentioned that -- the training
16 of the superintendents, so let me show you his
17 testimony.

18 Are you familiar with Mr. Lyle
19 Bankhead?

20 A. Only in name.

21 Q. Okay. Are you aware that Mr. Bankhead was
22 a probationary agent when he arrived at
23 Detachment 225?

24 A. I seem to recall that being the case, yes.

25 Q. So, again, with probationary agents, we

1 know that there needs to be a supervisor supervising
2 his activities. Right?

3 A. Yes.

4 Q. And if he's supposed to submit fingerprints
5 or criminal history as a probationary employee,
6 there should be a supervisor responsible for
7 catching any mistakes he makes on that front.
8 Right?

9 A. Yes.

10 Q. Do you know when Mr. Bankhead became
11 promoted to -- well, let me ask you this.

12 Actually, let's step back.

13 If he arrived at Detachment 225 in
14 2011, what is the minimum amount of time that he
15 would have been a probationary agent?

16 A. 2011, it would have been 15 months.

17 Q. So when is the earliest time in which he
18 could have graduated from being a probationary agent
19 to a full-fledged agent?

20 A. Tell me when he graduated from the academy.
21 I'm sorry.

22 Q. Sure. Here, let me show you. That would
23 be better.

24 You should see Mr. Bankhead's
25 deposition testimony, page 28, on your screen.

1 Correct?

2 A. Yes.

3 Q. And you can see that he arrived at
4 Detachment 225 on approximately May or June of 2011.
5 Right?

6 A. Yes. Lines 3 and 5, I think, is what
7 you're referring to. Right? Yes.

8 Q. Yeah. And 8 through 11 as well.

9 A. Okay.

10 Q. So if he arrived at Detachment 225 at May
11 or June of 2011, 15 months would be around August of
12 2012. Right?

13 A. Okay. Yes.

14 Q. So I'm just trying to do the simple math
15 here. May 1st, 2011, plus 15 months is August 1st,
16 2012. Right?

17 A. Yes. That sounds right.

18 Q. So August of 2012 is the earliest possible
19 point at which he could have graduated from being a
20 probationary employee to a full-fledged special
21 agent. Fair?

22 A. Yes. Fair.

23 Q. Okay. Do you know when he became
24 superintendent?

25 A. No, I don't, exactly.

1 Q. Would it surprise you to learn that he
2 became superintendent in August of 2012?

3 A. And when did he get off probation again?
4 August of ...

5 Q. August of 2012.

6 A. Yeah. Would it be unusual? Yes. It would
7 be -- it would be unusual. And it would be a bit
8 surprising to me, yes.

9 Q. So let me make sure we have our timeline
10 here, because he comes to Detachment 225, at the
11 earliest, in May of 2011. Right?

12 A. Right.

13 Q. And you see on lines 5 through 11 of his
14 deposition, page 41, that he actually left in
15 that -- the summer months for some pre-deployment
16 training. Right?

17 (Document review.)

18 A. Yes. That's what I think it says, yes.

19 BY MR. JACOB:

20 Q. Okay. And, now, Mr. Bankhead was
21 superintendent under Randall Taylor. Right?

22 A. Yes.

23 Q. Under -- now, while he was on the --
24 receiving on-the-job training, he should have
25 learned to competently submit fingerprints to the

1 FBI. Right?

2 A. He, Bankhead, yes.

3 Q. While he was receiving on-the-job training
4 as a probationary employee, he should have learned
5 to competently submit final dispositions to the FBI.
6 Right?

7 A. Yes.

8 Q. And he should have received training on
9 completing the appropriate case closure checklists
10 as well. Right?

11 A. Yes.

12 Q. Okay. Let me show you some of his
13 testimony.

14 Here I'm showing you page 35 of
15 Mr. Bankhead's testimony. Right?

16 A. Yes.

17 Q. Do you see in lines 6 through 17 he's
18 testifying he doesn't remember receiving training on
19 submitting fingerprints to the FBI?

20 A. Could we scroll up to -- I can't -- I mean,
21 we start with November 12. Is that the beginning of
22 that sentence? I think it's the middle.

23 Q. You should be able to see the entire page,
24 page 35.

25 A. Yes. I can see it.

1 training manager as to whether he provided it or
2 not.

3 Q. Well, let me ask you this:

4 You, as the Air Force representative on
5 training of these Air Force OSI agents, do you have
6 any evidence to contradict Mr. Taylor --
7 Mr. Bankhead's statement to the IG that he did not
8 receive training on fingerprints or the R-84
9 submission?

10 MR. STERN: Objection.
11 Mischaracterizes testimony.

12 A. I don't have any evidence, no.

13 BY MR. JACOB:

14 Q. Going back to the STS, do you remember on
15 the STS there were some middle columns?

16 A. Yes.

17 Q. And the middle -- and let me give you an
18 example of that so we're talking specifics and not
19 generalities.

20 On your screen should be page 58 of the
21 STS, USA 24812.

22 A. Yes.

23 Q. Do you see the third section, or column,
24 that's labeled "Certification For On-The-Job
25 Training"?

1 in those tasks.

2 That's what the "3" stands for. Right?

3 A. Yes.

4 Q. And if that probationary agent is competent
5 in the task, the certifier is supposed to initial on
6 the 3E column. Right?

7 A. Yes.

8 Q. For Mr. Taylor or Mr. Bankhead, did you see
9 a certification by a trainer in your investigation
10 of this case?

11 A. I haven't seen a completed STS for
12 Mr. Bankhead.

13 Q. Have you seen a completed STS for
14 Mr. Taylor?

15 A. No.

16 Q. Okay. Have you seen a completed STS for
17 Yonatan Holz?

18 A. No.

19 Q. Do you know who Mr. Holz is?

20 A. He was one of the investigators.

21 Q. Okay. Would it surprise you to learn he
22 was the primary investigator on the Devin Kelley
23 case file?

24 A. It would not surprise me.

25 Q. Okay. You should be seeing page 22 of

1 Mr. Holz's deposition. Right?

2 A. Yes.

3 Q. And you see lines 14 through 19 is where he
4 testifies that he was specifically involved as a
5 special agent investigator in the Devin Kelley case.
6 Right?

7 A. Yes.

8 Q. Do you know when Mr. Holz joined Holloman?

9 A. I don't recall the exact date. No.

10 Q. Okay. Let me show you -- I want to show
11 you page 15 of Mr. Holz's testimony. Right?

12 A. Okay.

13 Q. And you should see, from lines 2 through
14 about 15, that he joins New Mexico Detachment 225
15 right after training at the Federal Law Enforcement
16 Training Center in Georgia. Right?

17 A. Right.

18 Q. So if he's going straight from the
19 Federal Law Enforcement Training Center to Holloman,
20 that means he should be on a probationary status at
21 the beginning of his time at Holloman. Right?

22 A. Yes.

23 Q. That means that he should have someone
24 supervising him, as well, teaching him the ropes.
25 Right?

1 A. Yes.

2 Q. And by the time that he is finished in that
3 probationary status, he should be able to
4 competently submit fingerprints and criminal history
5 data to the FBI. Right?

6 A. Yes. Let me read this one.

7 He went to Seymour Johnson. And while
8 at Seymour Johnson, he should have been -- so he
9 gets to Holloman. So he should have been on
10 probation, yeah, until -- I'm calculating -- late
11 summer of '11. He could have been in training.

12 Am I tracking with what you're saying?

13 Q. Yes.

14 A. Okay. Yeah.

15 Q. And my question is more specific than that,
16 too.

17 By the time he finishes the on-the-job
18 probationary status at Holloman, he should be able to
19 competently submit fingerprints and final
20 dispositions to the FBI. Right?

21 A. Yes. By the completion -- by August or so
22 of '11, yes.

23 Q. Otherwise, a certifier should not certify
24 him as completing probationary status. Right?

25 A. Correct.

1 Q. Okay. So let me show you page 31 of his
2 deposition.

3 Do you see page 31 of Mr. Holz's
4 deposition in front of you?

5 A. Yes.

6 Q. Okay. I just want to zoom in on lines 13
7 through 21. Do you see that?

8 A. Yes.

9 Q. The question is:

10 QUESTION: "So just to close the
11 loop. Prior to your time at Holloman,
12 during your entire time, the entire time
13 at Holloman Air Force Base in 2011 and
14 2012, you did not receive any type of
15 training similar to the 2017 training you
16 received regarding how and when to submit
17 fingerprints at the FBI -- to the FBI
18 CJIS subdivision. Is that correct?"

19 ANSWER: "Correct."

20 Did I read that correctly?

21 A. Yes.

22 Q. Now, did you review Mr. Holz's deposition
23 before your testimony today?

24 A. I believe so. Yes.

25 Q. So you're aware that -- I'm sorry?

1 A. No. I'm sorry. I read -- I read a few,
2 and that was, I believe, one of them, yes.

3 Q. So you're aware the first time he received
4 training, in his testimony, about fingerprint
5 submission to the FBI was the -- in 2017 in Turkey?

6 Do you remember that?

7 A. I don't think I connected that.

8 I -- I thought that -- well, I had
9 not -- so to say that 2017 was the first training he
10 received when he was in Turkey, by that you mean
11 didn't -- you're saying that he did not receive
12 training in CITP or into BSIC either? Is that what
13 you're saying.

14 The first time is 2017 is what he's --
15 is what you're saying he's saying. At all.

16 BY MR. JACOB:

17 Q. Yeah. His testimony here on page 31 is
18 sort of a summation. And it's asking him whether at
19 Holloman or before Holloman he's received any
20 training on how and when to submit fingerprints to
21 FBI CJIS.

22 MR. STERN: Objection.

23 A. I see what you're referring to.

24 BY MR. JACOB:

25 Q. Okay. So that would be a failure in the

1 on-the-job training at Holloman Air Force Base.

2 Fair?

3 MR. STERN: Objection.

4 Mischaracterizes the testimony on the screen.

5 A. If he did not get OJT training on

6 submitting fingerprints and R-84s during his

7 probationary period, and he got off of probation

8 without getting that while he was on probation, then

9 that would be -- that would be a failure to complete

10 training properly for probationary training. Yes.

11 BY MR. JACOB:

12 Q. All right. Have you seen Mr. Holz's
13 certification -- training certification in the STS?

14 A. No. I don't think I have. No.

15 Q. So as you sit here today, as the Air Force
16 representative on the training of AFOSI agents, you
17 have no evidence to contradict Mr. Holz's testimony
18 that he did not receive training at Holloman Air
19 Force Base on submitting fingerprints?

20 A. That's correct.

21 Q. Can you tell me -- and let me close this.

22 Can you tell me, what training do
23 Air Force OSI airmen receive on correcting mistakes,
24 such as a failure to submit fingerprints or criminal
25 history to the FBI?

1 A. Training on not doing something? Is that
2 what you're asking?

3 Q. No. I'm asking what training do Air Force
4 OSI airmen, the folks that investigated the
5 Devin Kelley criminal charges in 2011 and 2012,
6 receive on correcting failures to submit final
7 dispositions or fingerprints to the FBI?

8 A. I don't think we give training on what to
9 do if you fail to do something.

10 Q. Okay. Let me ask you -- we talked about
11 Mr. Holz, we talked about Mr. Bankhead, and
12 Mr. Taylor.

13 Have you seen or found the STS for any
14 Holloman Detachment 225 OSI agent that was involved
15 in or in the Devin Kelley criminal investigation?

16 A. No, I have not.

17 Q. Okay. So as you sit here today, as a
18 representative of the Air Force on the training of
19 AFOSI agents, you cannot tell us what training, if
20 any, those individuals received on fingerprint card
21 collection and submission to the FBI or final
22 disposition submission to the FBI. Fair?

23 MR. STERN: Objection.

24 A. Are we speaking to the probationary period
25 only? Is that what you ...

1 BY MR. JACOB:

2 Q. We're speaking to the individual agents
3 involved in the investigation of the Devin Kelley
4 felonies and crimes of domestic violence.

5 A. I do not have their STSs. Correct.

6 Q. We've been going for a little while. Do
7 you need a break? I'm about to transition to
8 another section.

9 MR. STERN: Let's do so, please.

10 THE VIDEOGRAPHER: Time is 3:51 p.m.
11 Central. Off the record.

12 (Recess taken.)

13 THE VIDEOGRAPHER: The time is
14 4:11 p.m. Central. Back on the record.

15 BY MR. JACOB:

16 Q. All right. Mr. Poorman, can you hear me?

17 A. I can.

18 Q. Okay. I --

19 MR. ALSAFFAR: Wait a minute. Did
20 they push the video button?

21 That's just a joke. Sorry.

22 THE VIDEOGRAPHER: We did. My bad.

23 BY MR. JACOB:

24 Q. Okay. Mr. Poorman, are you ready to go?

25 A. Yes.

1 arrestees and convicted offenders conform to the
2 reporting requirement. Fair?

3 A. Yes.

4 MR. STERN: Objection.
5 Mischaracterizes the document.

6 BY MR. JACOB:

7 Q. Did I mischaracterize the document, sir?

8 A. Well, you read the recommendation
9 correctly, and then our response was the Air Force
10 agrees with our recommendation.

11 Q. So the Air Force did agree to correct -- or
12 take prompt action to ensure that fingerprint and
13 final disposition for future arrestees and convicted
14 offenders are submitted appropriately. Is that
15 fair?

16 A. Yes.

17 Q. So if we're dealing with the -- one week
18 after the time frame of this report Devin Kelley
19 gets convicted. Right?

20 A. Yes.

21 Q. But the Air Force does not follow through
22 on its agreement, did it?

23 MR. STERN: Objection.
24 Mischaracterizes testimony. Mischaracterizes the
25 document. Argumentative.

1 A. Well, I don't -- that's quite a leap. I
2 don't -- we implemented attempts to improve our
3 future arrestees. Did we get to 100 percent and
4 perfect? Then I think future assessments identify
5 precisely what was and wasn't done after this
6 report.

7 BY MR. JACOB:

8 Q. Well, let me ask you this:

9 Isn't it true that, as of at least
10 2017, maybe 2018, both AFOSI -- the Air Force OSI and
11 Security Forces have not corrected all of the
12 deficiencies identified in the 2015 DoD/IG audit?

13 A. The one specifically identified that needed
14 fixing, based on that sampling, is that -- or are
15 you talking generally?

16 Q. Well, first of all, the Air Force OSI and
17 Security Force -- well, let's stick with Air Force
18 OSI.

19 Air Force OSI did not correct the cases
20 identified by the inspector general in this 2015-081
21 DoD/IG report. True?

22 MR. STERN: Objection. Asked and
23 answered.

24 A. We corrected those we could correct, as is
25 spoken to in the memorandum that attached to this

1 report.

2 BY MR. JACOB:

3 Q. So the answer to my question is that the --
4 the mistakes identified by the DoD/IG were not
5 corrected even after the Devin Kelley incident?

6 MR. STERN: Objection.
7 Mischaracterizes previous testimony.

8 A. We corrected -- they identified like -- by
9 the time we sorted out which ones were ours and what
10 we were under an obligation to correct, we corrected
11 as many of the 15 that we could correct.

12 So we did correct some, and then
13 others we could not correct, so to the -- to those
14 that were identified in this report that pertained
15 to OSI. I can't speak to the Security Forces cases.

16 BY MR. JACOB:

17 Q. With regard to Air Force OSI, the Air Force
18 agreed to submit all -- to ensure that all future
19 convicted offenders are submitted to the FBI.
20 Correct?

21 A. Yes.

22 Q. And the Air Force did not submit all
23 future -- or convicted offenders to the FBI, did
24 they?

25 MR. STERN: Objection.

1 Mr. Poorman?

2 THE WITNESS: Yes. That's fine.

3 THE VIDEOGRAPHER: The time is

4 6:37 p.m. We're going off the record.

5 (Recess taken.)

6 THE VIDEOGRAPHER: The time is

7 6:44 p.m. Central. We are back on the record.

8 BY MR. STERN:

9 Q. Mr. Poorman, was there an obligation by OSI
10 case agents to note that they had submitted --
11 whether they had submitted fingerprints in an -- in
12 the IDP notes in I2MS?

13 A. Yes. To the -- in the case file in the
14 notes is, generally, where it's -- where it's
15 recommended to put that. Yes.

16 Q. Well, in the hard copy or in the -- in the
17 hard copy, the fingerprints would be placed in the
18 folder. Correct?

19 A. Correct. Right. That's -- they'd be
20 filed -- one filed, then the other should be sent
21 off. But, yes.

22 Q. And was there an obligation to note the
23 submission in IDP?

24 Well, what is IDP? Let me start that
25 way.

1 A. It's the internal data page. It's the
2 internal data page.

3 Q. So was it discretionary as to whether or
4 not that type of note would have been put in IDP?

5 A. We varied on where we put it, but -- I'm
6 sorry. I'd have to reflect on what's in IC4 of 121
7 at the time as to where it prescribes documenting
8 that.

9 Q. Is it fair to say that there were no
10 mandatory obligations in IC4 of AFOSI Manual 71-121
11 and no much mandatory obligation would have existed?

12 A. Correct.

13 Q. Thank you. Thank you for your time,
14 Mr. Poorman.

15 MR. STERN: That's all I have.

16 MR. JACOB: Mr. Poorman, I have a few
17 follow-up questions.

18 FURTHER EXAMINATION

19 BY MR. JACOB:

20 Q. First of all, I want to make very clear, so
21 we can clear up this last point that Paul just
22 raised. There is a mandatory obligation to document
23 the collection and submission of fingerprints in the
24 electronic file, is there not?

25 A. Yes.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HOLCOMBE, et al.,)
)
Plaintiffs,)
)
vs.) Civil Action No.
)
UNITED STATES OF AMERICA) 5:18-CV-00555-XR
)
Defendant.) (Consolidated cases)

REPORTER'S CERTIFICATE
REMOTE ORAL VIDEOTAPED DEPOSITION OF
UNITED STATES OF AMERICA
BY ITS CORPORATE REPRESENTATIVE
JAMES KEVIN POORMAN

July 9, 2020

I, Rebecca J. Callow, Registered Merit
Reporter, Certified Realtime Reporter, Registered
Professional Reporter and Notary Public in and for
the State of Texas, hereby certify to the following.

That the witness, JAMES KEVIN POORMAN, was
duly sworn by the officer and that the transcript of
the oral deposition is a true record of the
testimony given by the witness;

1 That the original deposition was delivered
2 to Jamal Alsaffar.

3
4 That a copy of this certificate was served
5 on all parties and/or the witness shown herein on
6 July 17, 2020.

7
8 I further certify that pursuant to FRCP
9 Rule 30(f)(1) that the signature of the deponent:

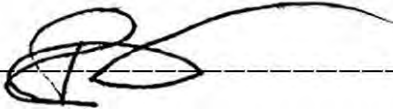
10 [X] was requested by the deponent or a
11 party before the completion of the deposition and is
12 to be returned within 30 days from date of receipt
13 of the transcript. If returned, the attached
14 Changes and Signature Page contains any changes and
15 the reasons therefor;

16 [] was not requested by the deponent or
17 a party before the completion of the deposition.

18 I further certify that I am neither
19 counsel for, related to, nor employed by any of the
20 parties or attorneys to the action in which this
21 proceeding was taken. Further, I am not a relative
22 or employee of any attorney of record in this cause,
23 nor am I financially or otherwise interested in the
24 outcome of the action.

25

SUBSCRIBED AND SWORN TO under my hand and
seal of office on this the 17 day of July, 2020.

A handwritten signature in black ink, appearing to read 'Rebecca J. Callow', is written over a horizontal dashed line.

Rebecca J. Callow, RMR, CRR, RPR

Notary Public, Travis County, Texas

My Commission No. 12955701-3

Expires: 09/12/2021

RES IPSA

501 Congress Avenue, STE 150

Austin, Texas 78701

512.334.6777

FIRM # CRF-11371

IN THE UNITED STATES DISTRICT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOE HOLCOMBE, et. al,	§	NO. 5:18-CV-00555-XR
	§	
Plaintiffs	§	Consolidated with:
	§	5:18-cv-00712-XR (<i>Vidal</i>)
	§	5:18-cv-00881-XR (<i>Uhl</i>)
vs.	§	5:18-cv-00944-XR (<i>Ramsey</i>)
	§	5:18-cv-00949-XR (<i>McNulty</i>)
UNITED STATES OF	§	5:18-cv-00951-XR (<i>Wall</i>)
AMERICA,	§	5:18-cv-01151-XR (<i>Amador</i>)
	§	5:19-cv-00184-XR (<i>Brown</i>)
Defendant	§	5:19-cv-00289-XR (<i>Ward</i>)
	§	5:19-cv-00506-XR (<i>Workman</i>)
	§	5:19-cv-00678-XR (<i>Colbath</i>)
	§	5:19-cv-00691-XR (<i>Braden</i>)
	§	5:19-cv-00706-XR (<i>Lookingbill</i>)
	§	5:19-cv-00714-XR (<i>Solis</i>)
	§	5:19-cv-00715-XR (<i>McKenzie</i>)
	§	5:19-cv-00805-XR (<i>Curnow</i>)
	§	5:19-cv-00806-XR (<i>Macias</i>)

NOTICE OF DEPOSITION

To: Defendant, United States of America, by and through
its attorney, Paul Stern, United States Department of
Justice, Three Constitution Square, 175 N Street,
N.E., Washington, DC 20002.

From: Plaintiffs, Vidal, et. al, 5:18-cv-712-XR, McNulty, et.
al, 5:18-cv-00949-XR; Wall, et. al, 5:18-cv-00951-XR;
Solis, et. al, 5:19-cv-00714-XR, and McKenzie, 5:19-cv-
00715-XR.

Please take notice that under Fed. R. Civ. P. 30(b)(6), the above Plaintiffs will take the deposition of the Defendant, United States of America. Pursuant to local, statewide, and national emergency orders related to the ongoing COVID-19 pandemic, the deposition will occur virtually with all parties attending via remote deposition technology provided by Res Ipsa. Secure links will be provided via email by Res Ipsa. The deposition will be recorded stenographically and may be digitally video recorded. The court reporter and videographer are being provided through Res Ipsa, 501 Congress Avenue, Suite 150, Austin, Texas 78701, email: depos@res-ipsa.com. The court reporter that swears in the witness remotely will do a statement on the record saying that all parties agree and stipulate to the remote deposition and the remote swearing of the witness. The deposition, when so taken and returned according to law, may be used in evidence at the trial of this case.

The deposition will be held on June 18, 2020 at 9:00am and will be conducted remotely by Res Ipsa, with the witness and all parties in their preferred respective locations.

You are invited to attend and participate as you deem appropriate. The deposition will take place from day to day until complete. Pursuant to Rule 30(b)(6), the United States of America shall designate one or more officers, directors, managing agents, or other persons who consent and are knowledgeable to testify on the United States' behalf with respect to the subject matters set forth in attached Exhibit A. A request to produce documents permitted under Rule 30(b)(2) is attached as Exhibit B.

DEFINITIONS

Please see applicable definitions in W.D. Tex. Local Rule CV-26(b)(1)–(7). The singular form of any word shall include within its meaning the plural form of the word and vice versa. For your convenience, Plaintiffs have duplicated those definitions here:

Communication. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

Document. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft of a nonidentical copy is a separate document within the meaning of this term.

Identify (With Respect to Persons). When referring to a person, to “identify” means to give, to the extent known, the person’s full name, present or last known address, e-mail address, and telephone number, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

Identify (With Respect to Documents). When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

Parties. The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent,

subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

Person. The term “person” is defined as any natural person or business, legal or governmental entity or association.

Concerning. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

ACRONYMS

The following acronyms apply to this notice:

ACRONYM	MEANING
AFOSI	Air Force Office of Special Investigations
CJIS	Criminal Justice Information Services
DIBRS	Defense Incident-Based Reporting System
DMDC	Defense Manpower Data Center
DoD	Department of Defense
DODIG	Department of Defense Inspector General
I2MS	Investigative Information Management System
IAFIS	Integrated Automated Fingerprint Identification System
NCIC	National Crime Information Center
NGI	Next Generation Identification
NIBRS	National Incident-Based Reporting System
NICS	National Instant Criminal Background Check System
USAF	United States Department of Air Force

Respectfully Submitted,

/s/ Jason P. Steed

Jason P. Steed

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Texas Bar No. 24070671

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LLP**

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Wall

/s/ Jamal K. Alsaffar

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& Jacob PLLC**

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Fax 512-476-4400

Counsel for Vidal, McNulty,
McKenzie, Solis, Ramirez
and Wall

CERTIFICATE OF SERVICE

By our signatures above, we certify that a copy of this pleading, Notice of Deposition, has been sent to the following on June 5, 2020 via email.

JOSEPH H. HUNT
Assistant Attorney General
United States Dept. of Justice
Civil Division

JOHN PANISZCZYN
Civil Chief
United States Attorney's Office
Western District of Texas

JOHN F. BASH
United States Attorney
Western District of Texas

JAMES G. TOUHEY, JR.
Director, Torts Branch
United States Dept. of Justice
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CLAYTON R. DIEDRICHS
Assistant United States Attorney

STEPHEN TERRELL
Trial Attorney, Torts Branch
United States Dept. of Justice
Civil Division
JAMES E. DINGIVAN
Assistant United States Attorney

JIM F. GILLIGAN
Assistant United States Attorney

EXHIBIT A

Examination is requested on the following subject matter areas:

1. The identity of persons, and identity and location of documents referenced in the DODIG-2015-011 Report.
2. The identity of persons, and identity and location of documents referenced in the DODIG 2015-081 Report.
3. The identify of persons, and identity of location of documents referenced in the DODIG 2018-035 Report.
4. The identity of persons, and identity and location of documents referenced in the DODIG-2019-030 report.
5. Training or education USAF personnel received concerning fingerprint collection and final disposition submission procedures, including submission to the FBI CJIS, NIBRS, or DIBRS. This topic concerns training or education given to personnel involved in the investigation, court-martial, or confinement of Devin Kelley between July 1, 2011 and December 14, 2012, whether they received the training at the time or some earlier time. This topic includes, but is not limited to: (a) the training or education provided by the Air Force Security Forces Academy at Joint Base San Antonio-Lackland, Texas; (b) the 65-day course at the security Forces Academy covering basic military police functions; (c) formal or informal training; (d) "on-the-job" training or education; (e)

recurring or annual training or education; and (f) training or education provided by the Naval Corrections Academy.

6. Policies, procedures, practices, checklists, and protocols concerning Air Force Security Force's and AFOSI's execution of DoD Instruction 7730.47-M Volume 1. This topic includes, but is not limited to, the monthly submission of information to the DMDC and the DIBRS database for centralization of the collection of information reportable by the DoD Components pursuant to The Brady Handgun Violence Prevention Act of 1993. This topic includes but is not limited to, information concerning I2MS, as noted on pages 8–9 of DODIG-2015-011.
7. Policies, procedures, practices, checklists, and protocols concerning the FBI CJIS NICS database and how other databases such as Next Gen (NGI) (formerly Integrated Automated Fingerprint Identification System (IAFIS)), NCIC, NIBRS, and Uniform Crime Report (UCR) are used to populate it. This topic includes, but is not limited to, the process by which the FBI receives and subsequently uses the information from DIBRS to prevent the purchase of firearms by any person prohibited by one of the eight listed categories.
8. Policies, procedures, practices, checklists, and protocols concerning the Air Force Security Force's and AFOSI's execution of DoD Instruction 5505.11. This topic includes, but is not limited to, the submission of fingerprints and final disposition reports to FBI CJIS by both the Air Force Security Force and AFOSI. This topic includes, but is not limited to, the process by which Devin Kelley's

fingerprints and final disposition report should have been reported to FBI CJIS.

9. Policies, procedures, practices, checklists, and protocols concerning probable cause determinations by a Staff Judge Advocate, especially to include, when a determination should be made, and any training given to guide Judge Advocates on probable cause determinations.
10. Policies, procedures, practices, checklists, and protocols concerning the USAF Corrections System policy for post-trial inmates during in-processing concerning the submission of fingerprints and final disposition reports to the FBI. This topic includes, but is not limited to, the collection of Devin Kelley's fingerprints and submission of his final disposition report by the confinement facility personnel.
11. Policies, procedures, practices, checklists, and protocols put in to place following DODIG-2015-081 pertaining to the AFOSI's NCIC program director to ensure that fingerprints and final disposition reports are submitted to IAFIS (NGI) according to DoD Instruction 5505.11.

EXHIBIT B

Under Fed. R. Civ. P. 34(b)(2), you are commanded to attend and testify at the above specified time and place; you are commanded to produce the below designated documents, electronically stored information, or tangible things in your possession, custody, or control. The following requests do not seek any communication to or from your legal counsel. Please produce a true and correct copy of the following within thirty (30) days of this notice or at the deposition, whichever is sooner. If produced before the deposition date, please produce these documents electronically. If produced at the deposition, please produce a physical copy of the document for examination and marking as a deposition exhibit, as well as an electronic version of the document in its native format.

1. Your current curriculum vitae or resume.
2. Documents you reviewed in preparation for this deposition.
3. Policies, procedures, practices, checklists, or protocols concerning the topics covered in Exhibit A.
4. Reports, notes, logs, letters, communication, or other documents you have authored or have been sent to you concerning this case or the topics covered in Exhibit A.
5. Charts, diagrams, PowerPoints, illustrations, or other demonstrative aids that illustrate the relationships or communication between any of the following: the FBI

CJIS, NICS, NGI, DMDC, NIBRS, DIBRS, IAFIS, or NCIC.

6. Handouts, manuals, course materials, or other documents concerning the training or education of any Air Force employee on fingerprint collection and final disposition submission procedures.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HOLCOMBE, et. al,

Plaintiffs

vs.

UNITED STATES OF
AMERICA,

Defendant

NO. 5:18-CV-00555-XR

(consolidated cases)

DECLARATION

I am _____, and I declare the following as true and correct:

- 1) I am of sound mind, over the age of 18, and have personal knowledge of the facts contained in this declaration. I was a deponent in the above-styled cause and was deposed by the parties by remote means.
- 2) From the beginning of the deposition until the end of the deposition, including breaks, I was under oath and received no coaching, assistance, or other help in answering questions, whether in person, by telephone, videoconference, or any electronic or other means of communication.
- 3) From the beginning of the deposition until the end of the deposition, including during breaks, I did not communicate—whether in person, by telephone, videoconference, or any electronic or other means of communication—with any person about the case other than what is reflected in the court reporter's transcript of the deposition.

Under 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED on this _____ day of _____, 2020.

SIGNATURE

IN THE UNITED STATES DISTRICT COURT FOR
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Defendant

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(consolidated cases)

REMOTE DEPOSITION PROTOCOL ORDER ORDER

The Court ORDERS that Parties should take remote depositions in this case while the COVID-19 Pandemic precludes in-person depositions. The Court ORDERS that the Parties should abide by the following protocol.

- a. Parties shall serve notice of depositions that outline the remote means of taking the deposition, including the technologies used and how parties should connect to the deposition. An example notice of deposition is attached to this order as EXHIBIT A.
- b. The court reporter shall swear the witness in remotely.
- c. Parties shall use only documents in deposition that have been previously exchanged more than five (5) business days prior to the deposition and uniquely bates stamped. Parties may refer to those documents by bates stamp number and display those documents on the witness' screen, if such technology is used. Should the parties wish to attach documents, Parties will put on the record the bates stamp range of the document and produce the document to the court reporter following the deposition.
- d. The court reporting or IT firm running the remote deposition technology will disable private chats between individuals involved in the deposition.

- e. At the conclusion of the deposition, the witness shall sign the declaration attached as EXHIBIT B to this Order, affirming that no witness tampering occurred.

It is so ORDERED.

SIGNED on this 28th day of April, 2020.

A handwritten signature in black ink, consisting of a stylized 'X' followed by a horizontal line and a small flourish.

HON. JUDGE XAVIER RODRIGUEZ

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HOLCOMBE, et. al,

Plaintiffs

vs.

UNITED STATES OF
AMERICA,

Defendant

NO. 5:18-CV-00555-XR

(consolidated cases)

**PLAINTIFFS' NOTICE OF DEPOSITION PURSUANT TO
FED. R. CIV. P. 30(B)(6)**

To: Defendant, United States of America, by and through
its attorney, Paul Stern, United States Department of
Justice, Three Constitution Square, 175 N Street,
N.E., Washington, DC 20002.

Please take notice that under Fed. R. Civ. P. 30(b)(6), the Plaintiffs will
take the deposition of the Defendant, United States of America, by oral exam-
ination using video, audio, and stenographic means, at the following location
and date:

Date: March 6, 2020, or other agreed date

Location: U.S. Attorneys' Office
Three Constitution Square,
175 N Street, N.E.,
Washington, DC 20002.

Time: 9:00 AM CST

Court Reporter: Res Ipsa or designee

Videographer: Res Ipsa or designee

The deposition will continue from day to day until completed, with such breaks, as necessary. Pursuant to Rule 30(b)(6), the United States of America shall designate one or more officers, directors, managing agents, or other persons who consent and are knowledgeable to testify on the United States' behalf with respect to the subject matters set forth in attached **Exhibit A**. A request to produce documents permitted under Rule 30(b)(2) is attached as **Exhibit B**.

DEFINITIONS

Please see applicable definitions in W.D. Tex. Local Rule CV-26(b)(1)–(7). The singular form of any word shall include within its meaning the plural form of the word and vice versa. For your convenience, Plaintiffs have duplicated those definitions here:

Communication. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

Document. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft of a nonidentical copy is a separate document within the meaning of this term.

Identify (With Respect to Persons). When referring to a person, to “identify” means to give, to the extent known, the person’s full name, present or last known address, e-mail address, and telephone number, and when referring to a natural person, additionally, the present or last known place of

employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

Identify (With Respect to Documents). When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

Parties. The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

Person. The term “person” is defined as any natural person or business, legal or governmental entity or association.

Concerning. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

EXHIBIT A

Examination is requested on the following subject matter areas:

1. Implementation of recommendations by Department of Defense (DoD) Inspector General, between 1997 and present, concerning the submission of criminal history data or fingerprints by Air Force units or command to DoD Defense Manpower Data Center or the FBI and Air Force agreements or undertakings to correct omissions or failures to submit such data or fingerprints. This topic includes corrective actions taken by the units or commands concerning such recommendations, agreements, or undertakings; instructions, regulations, guidelines, or other mandates provided to various Air Force units or command levels concerning such recommendations, agreements, or undertakings; and training or supervision provided to units or command concerning implementation of such recommendations, agreements, or undertakings.

EXHIBIT B

Under Fed. R. Civ. P. 34(b)(2), you are commanded to attend and testify at the above specified time and place; you are commanded to produce the below designated documents, electronically stored information, or tangible things in your possession, custody, or control. The following requests do not seek any communication to or from your legal counsel. Please produce a true and correct copy of the following within thirty (30) days of this notice or at the deposition, whichever is sooner. If produced before the deposition date, please produce these documents electronically. If produced at the deposition, please produce a physical copy of the document for examination and marking as a deposition exhibit, as well as an electronic version of the document in its native format.

1. Your current curriculum vitae or resume.
2. Documents you reviewed in preparation for this deposition.
3. Policies, procedures, practices, checklists, or protocols concerning the topics covered in **Exhibit A**.
4. Reports, notes, logs, letters, communication, or other documents you have authored or have been sent to you concerning this case or the topics covered in **Exhibit A**.
5. Handouts, manuals, course materials, or other documents concerning the training or education of any Air Force employee on fingerprint collection and final disposition

submission procedures reviewed by you that concern this case or the topics covered in **Exhibit A**.

Respectfully Submitted,

/s/ Jamal K. Alsaffar

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Counsel for Ward

CERTIFICATE OF SERVICE

By our signatures above, we certify that a copy of Plaintiffs' Motion has been sent to the following on January 21, 2020 via email to the following counsel of record

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United States Dept. of Justice
Civil Division

JOHN PANISZCZYN
Civil Chief
United States Attorney's Office
Western District of Texas

JOHN F. BASH
United States Attorney
Western District of Texas

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